

THIS DECISION IS NOT  
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OF THE TTAB

Mailed: 11/10/04

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Edward Lowe Foundation

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Serial No. 78145553

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Sana Hakim and Kathryn Starshak of Bell, Boyd & Lloyd for applicant.

John Dwyer, Trademark Examining Attorney, Law Office 116  
(Meryl Hershkowitz, Managing Attorney).

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Before Quinn, Walters and Bottorff, Administrative  
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application was filed by Edward Lowe Foundation to register the mark PEERNET for "providing computerized online databases featuring online peer group directories in the field of entrepreneurs, business surveys used to understand the needs and issues of entrepreneurial peer groups, directories of those wishing to ask entrepreneurial and business related questions of each other; and articles

and information in the field of and relating to entrepreneurial and business development issues.”<sup>1</sup>

The trademark examining attorney refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant’s mark, if used in connection with applicant’s services, would be merely descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs. An oral hearing was not requested.

Applicant contends that its mark, when considered as a whole, is not “PEER NETWORK,” but rather is a fanciful mark inasmuch as PEERNET does not exist in the English language. Applicant argues that its mark does not immediately convey any characteristic of applicant’s services, but rather requires imagination to determine attributes of the services; “it requires the same amount of imagination to link the PEERNET mark to Applicant’s services as it would to believe that the mark refers to a net that could be put up in a backyard to prevent neighbors from ‘peering’ into the yard.” (Brief, p. 8). Further, applicant asserts that any doubt about descriptiveness must be resolved in

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<sup>1</sup> Application Serial No. 78145553, filed July 19, 2002, based on an allegation of a bona fide intention to use the mark in commerce.

applicant's favor. According to applicant, its mark suggests "to consumers that Applicant's services could be used as a 'safety net' for entrepreneurs....Applicant has created a unitary mark that uses the multiple definitions of 'peer' and 'net' to suggest that entrepreneurs or other organizations can use Applicant's PEERNET services to 'capture' or 'snare' ideas of information from other entrepreneurs or organizations." (Brief, pp. 6 and 11). In support of its position, applicant relied upon dictionary definitions of the terms "peer" and "net."

The examining attorney, relying on dictionary definitions of the terms "peer" and "net," maintains that the mark sought to be registered is the equivalent of "PEER NETWORK," and that the mark is merely descriptive of applicant's services which are used as an entrepreneur peer network. In addition to the dictionary definitions, the examining attorney submitted, in support of the refusal, excerpts of web pages pulled from the Internet, copies of third-party registrations of marks which include "NET" for on-line services, and excerpts of articles retrieved from the NEXIS database.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an

ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. See, e.g., *In re MBNA America Bank N.A.*, 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003); *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Contrary to the gist of some of applicant's remarks, it is settled that "[t]he question is not whether someone presented with only the mark could

guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002); see also *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

The term "peer" is defined as "a person who has equal standing with another or others, as in rank, class, or age." *The American Heritage Dictionary of the English Language* (4<sup>th</sup> ed. 2000). The term "net" is an acceptable and commonly understood abbreviation for "network." *AcronymFinder* (2003). The term "network" means "an extended group of people with similar interests or concerns who interact and remain in informal contact for mutual assistance or support." *The American Heritage Dictionary of the English Language* (4<sup>th</sup> ed. 2000). As shown by the examining attorney's evidence, the term "NET" has been deemed merely descriptive in a number of third-party registrations which include disclaimers of the term "net," or which were registered under the provision of Section 2(f) or on the Supplemental Register. See *General Mills Inc. v. Health Valley Foods*, 24 USPQ2d 1270, 1277 (TTAB 1972) ["Although the registrations are not evidence of use,

the registrations show the sense in which the term 'fiber' is employed in the marketplace, similar to a dictionary definition.").

The record also includes the following representative evidence retrieved from the Internet and the NEXIS database:

Networking--Entrepreneurs are often engaged in a lonely struggle filled with risks and uncertainty, especially early in the growth of the firm. They can benefit considerably from associations with others who can share their successes and frustrations. There are several types of such networks. Peer networks are methods of providing entrepreneurs with access to others. The most common types are trade associations which are usually membership organizations of firms engaged in the same or similar industries. The interaction of these participants may be hindered if they perceive themselves to be competitors. Another type of peer network is based on the stage of the firm. Even very young firms can help others who are engaged in the same process of growing their business. Networks can provide a resource to companies that can help to sustain themselves under adverse circumstances and the networks can be retained as the firms grow. The second type of network relies on the availability of experts.  
(www.vistaventures.net)

As a relatively new executive position, CIOs just don't have the well-established peer networks that serve their business counterparts so well. We'd like to change that. This week

we're introducing Computerworld Executive Suite, a private online community where IT leaders can meet and talk....

(*Computerworld*, May 14, 2001)

The organization was formed to address issues relevant to the post community in the form of a peer network, industry panels, and the continuation of an annual technology retreat.

(*The Hollywood Reporter*, July 24, 2002)

The Young Entrepreneurs' Organization is a peer network that helps thriving business owners reach the next tier of success by offering networking opportunities....

(*The Business Press/California*, January 27, 2003)

Suggestions from Jim Rohrbach of Entrepreneur.com on how to start your own mastermind group include: I start with self-assessment. Why do you want to create a peer network?

(*The Journal Record (Oklahoma, OK)*, May 20, 2002)

....others are fostering community relationships with fellow IT executives, building a strong peer network....

(*Infoworld*, December 9, 2002)

....the Young Presidents Organization, a global peer network for presidents and chief executive officers of companies of a certain size.

(*Ventura County (CA) Star*, September 7, 2000)

Interested company leaders may also join the strategic leadership forums held after the events that allow a peer network discussion that goes deeper

into the various issues.  
(*Milwaukee Journal Sentinel*, February 21, 2000)

There's a peer network in the eastern part of the state, where farmers can see other farms that have expanded and talk to someone who's done it to relieve their apprehension.  
(*Milwaukee Journal Sentinel*, June 21, 1998)

....she urges tapping into peer networks and poring over industry salary data....  
(*The Courier-Journal* (Louisville, KY), November 27, 2000).

Applicant states that its "services are meant to allow entrepreneurs to exchange information with other entrepreneurs through an online information exchange."  
(Brief, p. 6). An excerpt from applicant's web page indicates that it is providing "A Collaborative Learning Network," and that applicant's "Member Directory" allows the user to "Connect with the correct people." The excerpt shows the following:

Our PeerNet member directory is a secure service provided uniquely to the members of the CEO Resource Alliance, allowing us to:

- contact members from across the country
- focus searches using specific information (state, industry, etc.)
- participate in the Experience Exchange

We must consider the mark as a whole in determining whether the mark is merely descriptive because, even if the



individual terms are descriptive, the mark as a whole may not be. However, in the present case, we cannot agree with applicant that the combined term is suggestive. Rather, we agree with the examining attorney's assessment that the applied-for mark PEERNET would be readily perceived as PEER NETWORK; substituting the abbreviation NET for the full word NETWORK, and removal of the space between the two terms PEER and NET does not change the commercial impression of the mark in any meaningful way. Based on the evidence of record, we find that PEERNET is merely descriptive of the salient function or feature of applicant's services, namely, to allow peers (that is, individuals with similar interests and concerns) to network through an on-line exchange of ideas and information. Applicant's services are, in effect, providing an on-line peer network.

We are entirely unpersuaded, for the same reasons indicated by the examining attorney, by applicant's arguments based on competitors' need to use the term, the anti-dissection rule, and that imagination is required to discern any characteristic of applicant's services. We also reject applicant's apparent "double entendre" argument relating to the "snare" or "trap" meaning of "net," or to the meaning of "safety net." These alleged connotations

simply are too oblique and strained, and, therefore, are highly unlikely to be reached by purchasers, especially given the obvious "peer network" connotation.<sup>2</sup> Further, although applicant is correct in stating that doubts about mere descriptiveness are resolved in an applicant's favor, we have no doubts in the present case given the evidence of record. See *In re Tekdyne Inc.*, 33 USPQ2d 1949, 1953 (TTAB 1994) ["The fact that applicant will, or intends to be, the first and/or only entity to use the term 'MICRO-RETRACTOR' for surgical clamps is not dispositive where, as here, such term unequivocally projects a merely descriptive connotation."].

Decision: The refusal to register is affirmed.

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<sup>2</sup> Cf. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004) ["tennis.net" for a store selling tennis nets would be a "witty double entendre" relating to tennis nets].